IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 178 OF 2004

1. Smt. Nalini Bhanudas Khatavkar,
residing at Pusesawali, Taluka Khatav,
District Satara.

2. Smt. Pushpa Dattatraya Gosavi,
residing at Pusesawali, Taluka Khatav,
District Satara.

3. Smt. Shahanaj Akbar Bagwan,
residing at Pusesawali, Taluka Khatav,
District Satara.

4. Aruna Vijay Mahamuni,
residing at Pusesawali, Taluka Khatav,
District Satara.

5. Ashalata Prabhakar Khuntale,
residing at Vadgaon, Taluka Khatav,
District Satara.

6. Smt. Sulbha Ashok Kapadekar,
residing at Mayani, Taluka Khatav,
District Satara.

7. Smt. Savita Naresh Zodage,
residing at Mayani, Taluka Khatav,
District Satara.

8. Smt. Chaya Popat Kambale, residing
at Mayani, Taluka Khatav,
District Satara.

9. Smt. Suvarna Sadanand Velapure,
residing at Mayani, Taluka Khatav,
District Satara.

10. Smt. Chaya Adhik Kashid,
residing at Pachwad, Taluka Khatav,
District Satara.

11. Smt. Lailabai Kasam Shaikh,

residing at Aenkul, Taluka Khatav,
District Satara.

12. Smt. Nirmala Raghunath Patole,
residing at Vaduj, Taluka Khatav,
District Satara.

13. Smt. Sushila Raghunath Shinde,
residing at Daruj, Taluka Khatav,
District Satara.

14. Smt. Chaya Manohar Pawar,
residing at Pusegaon, Taluka Khatav,
District Satara.

15. Smt. Alka Haribhau Vedphatak,
residing at Pusegaon, Taluka Khatav,
District Satara.

16. Smt. Ranjana Tanaji Kudale,
residing at Jamb, Taluka Khatav,
District Satara.

17. Smt. Anita Subhash Mali,
residing at Satewadi, Taluka
Khatav, District Satara. ... Petitioners

Versus

1. The State of Maharashtra through
the Secretary, Rural Development
Department, Mantralaya, Mumbai 32.

2. The Secretary,
Woman and Child Welfare Department,
Mumbai 32.

3. The Secretary, G.A.D. Department,
Mantarlaya, Mumbai 32.

4. The Director, Integrated Child
Development Services, Maharashtra
State, Nashik.

5. The Commissioner, Integrated Child
Development Services, Maharashtra State,

Konkan Bhavan, Navi Mumbai.

6. Satara Zilla Parishad through
Chief Officer, Satara Zilla Parishad.

7. Project Officer, Integrated Child
Development Services at Khatav,
Taluka Khatav, District Satara.

8. Smt. Kalpana Tukaram Deshmukh,
C/o. Integrated Child Development
Services, Project Officer, Karad District,
Satara.

9. Smt. Bhagyashri Umakant Kulkarni,
C/o. Integrated Child Development
Services, Project Officer, Khandala,
District Satara.

10. Smt. Shobha Ramdas Gore,
C/o. Integrated Child Development
Services, Project Officer, Khandala,
District Satara.

11. Smt. Chaya Sadashiv Shetye,
C/o. Integrated Child Development Services
Project Officer, Wai District, Satara.

12. Smt. Anjali Bhalerao Deshpande,
C/o. Integrated Child Development
Services, Project Officer, Wai District,
Satara.

13. Smt.Shamshad Rashid Sayyad,
C/o. Integrated Child Development Services,
Project Officer, Patan, District Satara.

14. Smt. Jaibunnissa Saluddin Kazi,
C/o. Integrated Child Development Services
Project Officer, Patan, District Satara.

15. Smt. Meena Ramchandra Potdar,
C/o. Integrated Child Development Services
Project Officer, Patan, District Satara.

16. Smt. Janubai Machandranath Shinde,
C/o. Integrated Child Development Services,

Project Officer, Patan, District Satara.

17. Smt. Asia Liyakatali Kazi,
C/o. Integrated Child Development Services,
Project Officer, Satara, District Satara.

18. Smt. Sharda Mahadeo Jadhav,
C/o. Integrated Child Development
Services Project Officer, Satara,
District Satara.

19. Smt. Kamal Janardhan Shinde,
C/o. Integrated Child Development
Services Project Officer, Satara,
District Satara.

20. Smt. Sunanda Bapu Avale,
C/o. Integrated Child Development
Services Project Officer, Satara,
District Satara.

21. Smt. Mandakini Gulabrao Lavand,
C/o. Integrated Child Development
Services Project Officer,
Koregaon, District Satara.

22. Smt. Sashikala Subarao Fhadtare,
C/o. Integrated Child Development Services
Project Officer, Koregaon, District Satara.

23. Smt. Shobha Nandkumar Dhurmadhmari,
C/o. Integrated Child Development Services
Project Officer, Koregaon, District Satara.

24. Smt. Shila Ramchandra Dhondge,
C/o. Integrated Child Development Services
Project Officer, Jawli, District Satara.

25. Smt. Minakshi Sopan Jankar,
C/o. Integrated Child Development
Services Project Officer, Khatav,
District Satara. ... Respondents

Mr. P.A. Pol for Petitioner.

Mrs. M.P. Thakuar, A.G.P. for R. Nos. 1 to 5 & 7.

Mr. M.B. Mehere for R. No. 6.

Mr. R.H. Pethe for R. No. 12.

Mr. Uday Warunjikar for R. Nos. 8 to 25.

CORAL : F.I. REBELLO &
DR.D.Y.CHANDRACHUJ,JJ.
DATED : FEBRUARY 28, 2006

ORAL JUDGMENT (Per F.I. Rebello,J.) :

. The Petitioners are working as Anganwadi Sevika/workers under the control of Child Welfare Development Project Officer of the Integrated Child Development Services, Khatav, District Satara since the year 1990. They have approached this court being aggrieved and dissatisfied by the Orders dated 31.3.2003, 25.3.2003 and communication dated 6.10.2003 passed by the Government and Satara Zilla Parishad respectively for not selecting the Petitioners to the post of Supervisors though they are fulfilling all the requirements and had appeared for the examination and appointing Respondent Nos. 8 to 25 to the post of Supervisors though they had not appeared in the examination held on 16.3.2003 and that too contrary to the directions of this court in Writ Petition No. 5335

of 2000.

2. The Central Government has introduced a scheme for the welfare of children and women in the Rural and tribal areas known as "Integrated Child Development Services Project". The scheme covers the children in the age group of 0 to 6 from amongst weaker sections of the society, pregnant women and lactating mothers who are given facilities with respect to their medical check up, training to develop resistance against diseases, appropriate health services, nutritious diet and informal education. The scheme is implemented by the Respondent State in terms of various resolutions issued by the Government of India from time to time. The Zilla Parishad, in the instant case Respondent No. 6, has to implement the scheme. Respondent No. 6 had conducted examination from amongst eligible Anganwadi Sevikas/workers for appointment to the post of Supervisors. The grievance of the Petitioners is that Respondent Nos. 8 to 25 are the Anganwadi Sevikas/workers under the project officer integrated Woman and Child Development Services,

Taluka Khatav, District Satara, who were illegally appointed to the post of supervisors in the year 2000. Therefore, this Hon'ble Court in Writ Petition No. 5334 of 2000 cancelled their appointments. However, Respondent No. 6 again arbitrarily, illegally and favourably appointed them to the post of supervisors, without conducting any examination as contemplated in the Government Resolution dated 24.4.1995 and 5.1.1998.

3. In terms of the direction of the State Government by Resolution dated 5.1.1998, the Government has introduced the procedure to fill up 25% of the posts from sanctioned strength from amongst workers who are working under the Integrated Child Development Services Project. The post of Supervisors in terms of directions issued by the Central Government has to be filled in by the Regional Selection Services Board and that too from amongst the said rural level workers. The eligibility for being considered to the appointment to the post of Supervisors against 25% of the total number is of workers who have passed S.S.C. and had completed 10 years service on honorarium as

Mahila Workers. The candidates are required to appear for written examination consisting of one paper of 100 marks and on the basis of marks received, a list of selected candidates was to be prepared. The State Government by order dated 3.12.1997 exempted the selection to the said post from the purview of the Regional Selection Service Board and appointed the District Level Committee for selection to the Office of Collector, Chief Officer, Zilla Parishad, District Welfare Officer, Project Officer. The selection committee has to be in terms of the G.R. dated 5.1.1998. The Z.P. issued circular dated 3.1.2000 inviting applications from the eligible workers for selection to the post of Supervisors. The eligibility criteria as set out in the letter was as under :

(a) The educational qualification: minimum S.S.C. passed.

(b) The applicant should have completed minimum continuous 10 years service as Anganwadi Sevika.

(c) The minimum age limit is 45 years;

(d) 100 marks written test paper and interview;

(e) Certificates in respect of educational qualification;

(f) Certificates in respect of 10 years service in Anganwadis.

4. As the Petitioners had not completed 10 years of service as Anganwadi Sevika in terms of Circular dated 3.1.2000, they were not permitted to apply for post of Supervisor. Respondent Nos. 8 to 25, however who also did not have the necessary experience were permitted to appear for the said examination. The Anganwadi workers who had passed written examination were called for interview. Some of them were not selected for the post of supervisors. Respondent Nos. 8 to 25 were however, appointed to the post of supervisors. Some of the candidates who were from Man Taluka, had passed the examination but had not been

selected, approached this court by filing petition being Writ Petition No. 5335 of 2000. Respondent Nos. 8 to 25 were added as Respondents. The appointments were challenged on the ground that they had not completed qualifying service prior to application. The challenge by these petitioners was upheld by judgement and order of this Court dated 30.9.2002. The appointment of Respondent Nos. 8 to 25 was set aside. Further direction was given to issue appointment orders to the Sevikas, who were otherwise eligible which was to include the petitioners who were eligible and to correspondingly cancel the appointments of those who were not eligible. A direction was also given to issue notice to those likely to be affected other than Respondent Nos. 8 to 25 and whose promotions are likely to be cancelled. They were permitted to file representation. The Zilla Parishad was directed to issue necessary orders on December, 2002. It was further set out that the Petitioner there and others who were wrongly denied appointment shall be deemed to have been permitted along with others when they were issued appointment orders on 2.5.2000. The Court also noted that the

Respondent Nos. 8 to 25 before it, who are also respondent Nos. 8 to 25 in this petition, were ineligible. The Court also noted that in the list of 65 eligible sevikas, there were others also who had not put in 10 years of service and still others who had completed 10 years and yet had been denied appointments erroneously. A direction was given to Zilla Parishad, Satara to examine the list once again in the light of the observations and directions given above and to issue appointment orders (after examining all requirements including reservations) to the Sevikas who were otherwise eligible and who were to include the eligible Petitioners and correspondingly cancel the appointments for the non-eligible promotes prior thereto.

. The Respondent Nos. 8 to 25 approached the Apex Court by way of Special Leave Petition. The Special Leave Petition was dismissed. Consequent thereupon the services of Respondent Nos. 8 to 25 were terminated by order dated 31.12.2002.

5. In the meantime, by letters of 28.4.1995 and

5.1.1998 respondent No. 6 had invited applications from candidates belonging to backward class to fulfil the backlog of posts of supervisors. The eligibility criteria set out therein was as under :

1. Education Qualification : Minimum S.S.C. pass.

2. The applicant should have completed minimum continuous 10 years service as Anganwadi Sevika (to be considered services as Sevika/Teacher/helper).

. The Respondent No. 7 accordingly submitted list to the Respondent No. 6 of the backward class Sevika along with application of the petitioners working under him. The call letters were issued for examination. The Petitioners who appeared for the examination were declared passed and have been called for interview thereafter. The grievance of the petitioners is that as they have passed the examination and and are meeting the eligibility norms, they ought to have been issued letters of appointment to the post of Supervisors. To their surprise, however, Respondent Nos. 8 to 25 who had

not appeared for the examination held on 16.3.2003 and did not belong to backward class were appointed. They could not have been appointed as they were ineligible having not appeared for examination and also not belonging to backward class community. On enquiries with Respondent No. 6 as to how Respondent No. 8 to 25 came to be appointed, it was informed that they were appointed as per directions of the Government and that the case of the Petitioner will be considered as and when the post is available.

. It is consequent on this, that the Petitioners have filed the present petition.

7. A reply was filed on behalf of the Respondent No. 6 dated 26.3.2004 by the Deputy Chief Executive Officer, Zilla Parishad, Satara. It is set out that the services of Respondent Nos. 8 to 25, were terminated vide order dated 31.12.2002 and as such the Zilla Parishad had complied with the order of the Court. 18 respondents whose services were terminated had made representation to the Zilla Parishad and Government as also the

Commissioner, Pune Division. The Government asked the Zilla Parishad to send its remarks on the said representation and accordingly the Zilla Parishad by their letters dated 31.1.2003, 6.3.2003 and 15.3.2003 submitted the factual position and report to the respondent government. Therefore, their case was considered as a special case on humanitarian ground by the Government as the Zilla Parishad, required the services of the supervisors to supervise the Anganwadi Sevikas appointed under the said scheme in a large number of villages in the districts under the scheme.The Government therefore,, by order dated 25.3.2003 addressed to the respondent Zilla Parishad directed the Zilla Parishad to appoint the 18 respondents to the petition as supervisors. It is further set out that pursuant to the said order of the Government, the Zilla Parishad had issued orders appointing 18 respondents as supervisors by order dated 27.3.2003. It is also set out that there were total 34 posts of supervisors in the office of the Zilla Parishad out of which orders were issued to 18 respondents under order dated 27.3.2003 leaving behind 16 vacant posts to be filled in by the

respondents Zilla Parishad for implementation of the above scheme. Out of these, 8 reserved candidates were selected by selection committee who appointed them to the post of supervisors by appointment letter dated 31.3.2003. As the candidates from S.T. were not available, they were not filled in. For four posts, 131 applications were received out of which 127 appeared for the written test which was held on 12.10.2003 and the interview held on 11.11.2003. The appointment letters dated 21.11.2003 were issued. From the 18 supervisors who were appointed, there were 4 OBC candidates, 2 were Scheduled caste candidates and 12 were from open category. The Petitioners belong to OBC category, except Petitioner Nos. 7 and 8 who belong to Scheduled Caste category and as such there was no quota available for OBC category to be filled in for the post of supervisors. They were therefore, not called for the interview even though they have passed the written test/examination.

8. An affidavit was filed on 8.2.2006 pursuant to the orders of this court dated 31.1.2006. It is

pointed out that subsequent to direction of this court in Writ Petition No. 5335 of 2000, those who were eligible were appointed by the order dated 31.12.2003. It is pointed out that the Government of Maharashtra vide their Government Resolution dated 5.1.1998 reserved 25% seats for promotion from Anganwadi Sevikas to the post of supervisors to supervise group of villages anganwadies in that taluka or block. It is further contended that by subsequent Government Resolution dated 2.1.2002 the Government of Maharashtra has issued orders for reservation of 50% posts for promotion to the post of supervisors from Anganwadi SEvikas instead of 25% as declared in the previous G.R. dated 5.1.1998. It is contended that the Government of Maharashtra has sanctioned total 116 posts as Anganwadi Supervisors, out of which 50% are to be promoted from the Anganwadi Sevikas which comes to 58 posts. The Zilla parishad has already promoted 24 Anganwadi Sevikas to the post of supervisors leaving behind the balance of 34 seats to be filled in by promotion. The Government of Maharashtra had directed vide G.R. dated 31.10.2002 and 2.1.2003 to fill the backlog of Reserve Category seats

before 31.3.2003. Therefore, Z.P. Satara has decided to launch drive as the G.R. directed to take disciplinary action against Department head if the backlog is not filled up before 31.3.2003. In the written test which was conducted, 47 Anganwadi Sevikas appeared of which 13 amongst Petitioners belong to O.B.C. category. The roster shows only 4 vacancies for O.B.C. It is pointed out that 18 appointments were done by order dated 25.3.2003 based on the written examination on 18.01.2000. Eight reserved quota were appointed from examination dated 16.3.2003. Thus out of 58 seats, 24 have already been appointed. However, 18 candidates whose services were terminated then came to be set out to which we have referred earlier. From 34 posts which were available, 18 were filled in on humanitarian ground i.e. Respondent Nos. 8 to 25.

9. A reply was also filed on behalf of Respondent Nos. 8 to 25 by Smt. Sharada Mahadeo Jadhav. It is set out that the State of Maharashtra had necessary power to relax the condition. The State Government took a decision to relax and in these

circumstances, their appointments cannot be set aside.

. A reply was also filed by Dr. Jairaj Moreshwar Phatak, Principal Secretary, Rural Development and Panchayati Raj Department, Government of Maharashtra, pursuant to the direction of this court. There is nothing additional set out except to contend that the Petitioners cannot make any grievance over their non selection.

10. Having heard learned counsel for the Parties and considering various replies filed, we find that the action of Respondent Nos. 1 to 6 in issuing letters of appointment to Respondent Nos. 8 to 25 was totally arbitrary and with a view to defeat the order of the is court passed in Writ Petition NO. 5335 of 2000. Though the affidavit sets out the Respondent No. 6 complied with the order of this court, this is nothing but lip service. After carrying out of direction Respondent Nos. 8 to 25, were brought in through the back door, as on the date when they had appeared for the examination, they were not eligible. This court in clear terms

had so stated. All that can be said is that their appointments were based on totally extraneous consideration. The contention sought to be advanced that this was a humanitarian gesture, defies the equality clause of our constitution. Many of the Petitioners who had not put in 10 years of experience, were not allowed to appear for the examination for which Respondent Nos. 8 to 25, though not eligible were allowed to appear. The direction of this court was to terminate their appointments as supervisors. It appears that the Respondent No. 6, misread the direction to be termination of Respondent Nos. 8 to 25 not only from the post of Supervisors but also as Anganwadi Sevika which appointments had not been challenged. They ought to have been reverted to the post of Anganwadi Sevikas, but instead were also terminated from the said posts. This action of the Respondent No. 6 was not according to directions of this court.

. The Judgement of this court, in our opinion was very clear and we may gainfully refer to the following passage :

> "We therefore, direct the Zilla Parishad, Satara to examine the list once again in the light of the observations and directions given above and issue appointment orders (after examining all requirements including reservations) to the Sevikas who were otherwise eligible and who will of course include the Petitioners and correspondingly cancel the appointments of the non-eligible promotees Prior thereto, the Zilla Parishad will issue notices to the Sevikas (other than respondent Nos. 8 to 25) who are not before the Court but whose promotion are likely to be cancelled. ....."

. The justification sought to be given for re-appointing the Respondent Nos. 8 to 25 merely because they made representation and the same was forwarded by some political functionary, by itself was not a ground for Government to make

appointments contrary to Law and against the Government resolution. Such an exercise to overcome the judgment of this court could only be done by proper legislation and after remedying the cause which will led this court to strike down the appointments and or if there had been power to relax the rules generally. Such an exercise, then had tobe done for all and not only for Respondent Nos. 8 to 25. All authorities subject to jurisdiction of this court and to whom directions are issued by this court are bound to comply with the directions in the letter and spirit. Their failure to do so would invite invocation of the contempt jurisdiction of this court, in order to maintain the rule of law. To proceed against those who act in violation by exercising contempt powers is to maintain the majesty of our Constitution. This we had proposed to do in this case. We however, find that the present incumbents holding the posts, may not be the persons who had violated the directions of this court and it is in these circumstances that we have chosen not to adopt that recourse to proceed against them.

. From the discussion what emerges is that there are posts available though not reserved for O.B.C. That by itself cannot be a ground for non consideration of the Petitioners against the open category seats if otherwise they were qualified, eligible and had passed necessary examination. At the same time we have to also consider the fact that Respondent Nos. 8 to 25 did not appear for the examination as they had been already appointed to the post of supervisors. In these circumstances, it will not be possible to put those respondents at the disadvantage by denying them an opportunity, as they are now eligible like Petitioners but who have appeared for the examination. The fact however, remains that though the appointment of Respondent Nos. 8 to 25 to the post of Supervisors cannot be upheld, yet they were entitled to continue to hold the earlier post as Anganwadi Sevikas. Their appointment from these posts could not have been terminated as that was never in issue before this High Court in the earlier writ petition.

. The contention of the Petitioner is that they

have already passed examination and as such there is no question of their appearing for the fresh examination. There is some merit in this contention. However, considering the facts of this case, at the highest what we can set out is that those amongst petitioners who have appeared for the examination and who have passed, need not appear for the fresh examination to be conducted. However, their marks obtained in the previous examination will be considered for the purpose of computing their merit in the new selection. It is however, always open to them to appear for the fresh examination which may be held, pursuant to the orders of this court, consequent upon the appointment of Respondent Nos. 8 to 25 being set aside to the post of supervisors. For the aforesaid reasons, we propose to dispose of this petition by issuing the following directions :

(1) The appointment of Respondent Nos. 8 to 25 to the post of Supervisors is quashed and set aside. The said respondents, however, will be reverted to the post of Anganwadi sevikas.

(2) In respect of the available vacancies to the post of supervisors, the respondent will invite fresh applications from amongst eligible candidates and thereafter make selection after complying with the procedure for appointment to the post of supervisors. The cut off date will be the date of the last examination for which the Petitioner had appeared.

(3) If the Petitioners who have passed examination and are not desirous of appearing for the fresh examination to be conducted for filling in the post of supervisors, they may opt not to do so. In their case the marks obtained by them in the previous examination will be considered for the purpose of evaluating their merits in the list to be prepared for selection. From those amongst the petitioners who seek to appear for the examination de novo, their marks will be considered based on the result of the fresh examination and not based on the result of the old examination.

(4) The entire exercise to be completed within the period of six months from today.

(5) Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J)

(DR.D.Y. CHANDRACHUD,J.)